88-2114

Supreme Court, U.S.
FILED
MAY 30 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1988

TIMOTHY J. BURKE, JR.,
Petitioner

vs.

CITY OF BOSTON,
RICHARD DIMINO, PARKING CLERK OF
THE CITY OF BOSTON
Respondents

Petition For Writ of Certiorari to the Commonwealth of Massachusetts Appeals Court

Timothy J. Burke
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QUESTIONS PRESENTED FOR REVIEW

1. Whether the holding that the actual bias of administrative hearing officers is acceptable and that this bias does not violate due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution conflicts with the Court's prior holding in Ward v. Monroevillle , 409 U.S. 57 (1972), that a possible temptation toward bias, as opposed to actual bias, violates due process of law.

2. Whether the holding that individuals can be accused of offenses by government officials who can not be subjected to cross examination violates due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

3. Whether the holding of biased administrative hearings is violative of the petitioner's constitutionally protected rights as protected by 42 U.S.C. s. 1983.

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I. REFERENCE TO THE UNOFFICIAL REPORT

The judgment from which the petitioner is requesting certiorari is a final judgment of the Commonwealth of Massachusett's Supreme Judicial Court.

II. STATEMENT ON THE GROUNDS OF THE COURT'S JURISDICTION

The judgment which the petitioner is asking to be reviewed is the Commonwealth of Massachusetts' ("Massachusetts") Supreme Judicial Court's ("Supreme Judicial Court") denial of the petitioner's request for Further Appellate Review of the Massachusetts Appeals Court's ("Appeals Court") ruling on this matter. The Supreme Judicial Court's ruling was entered on March 28, 1989.

III. THE CONSTITUTIONAL PROVISIONS AND STATUTES IN QUESTION

The constitutional provision in question is the Fourteenth Amendment to

the United States Constitution..

The United States Statutue in question is 42 U.S.C. s.1983.

The Massachusetts' statutes in question are G.L.c. 90 s.20 A 1/2 and 1982 Mass Acts c. 190.

IV. STATEMENT OF THE CASE

1. Statement of the Proceedings

On September 1[illegible], 1982 the petitioner, while a law student, filed the complaint in this action. The petitoner's amended complaint requested a reversal of the City of Boston's ("Boston") Parking Clerk's ("Parking Clerk") findings of liability against the plaintiff at hearings held at his office. The amended complaint further requested a judgment declaring the provisions of G.L. c. 90s. 20A 1/2 and 1982 Mass Acts c. 190 relating to hearings afforded pursuant to these statutes as violative of the United

States Constitution. The amended complaint also requested damages from the Parking Clerk's violation of the plaintiff's constitutionally protected procedural due process rights pursuant to 42 U.S.C. s.1983.

A trial was held on April 7 and 8, 1987, before Judge Elbert Tuttle of the Commomwealth of Massachusetts Superior Court Department ("Superior Court"). On January 12, 1988, Judge Tuttle issued final judgment. The Superior Court held that there was insufficient evidence presented by the Parking Clerk at his hearings for a finding of liability. The Superior Court also ruled that the Parking Clerk had not violated the civil or constitutional rights of the plaintiff in holding his hearings and that the G.L.c. 90s. 20A 1/2 and 1982 Mass Acts c.190 were constitutional.

The petitioner filed his appeal from that judgment on February 3, 1988.

On January 12, 1989, the Appeals Court heard the Petitioner's appeal.

The Appeals Court issued its decision affirming the Superior Court's judgment on February 3, 1989. The Appeals Court affirmed the Superior Court's holding that there was insufficient evidence presented by the Parking Clerk at his hearings for a finding of liability and that the Parking Clerk had not violated the civil or constitutional rights of the petitioner in holding his hearings. The Appeals Court also ruled that this matter was not appropriate for a declaration concerning the constitutionality of the statutes in question as the plaintiff had not complied with the requirements of G.L.c.

231A s.8 in challenging G.L.c. 90s. 20A 1/2 and 1982 Mass Acts.

On February 9, 1989, the petitioner filed a Petition for a Rehearing with the Appeals Court as the result of the Appeals Court's erroneous ruling that the Petitioner had not complied with the requirements of G.L.c. 231A s.8 in challenging the constitutionality of G.L.c. 90 s.20A 1/2 and 1982 Mass Acts c. 190.

On March 8, 1989, the Appeals Court issued an Amended and Supplemented Memorandun decision, reversing its decision on the issue of the petitioner's compliance with G.L.c. 231 A s.8 and affirming its decision on the constitutionality of G.L.c. 90 s.20A 1/2 and 1982 Mass Acts c. 190.

Also, on March 8, 1989, the petitoner filed a Request for Further Appellate Review with the Commonwealth of

Massachussetts Supreme Judicial Court. This request was denied on March 28, 1989 and stands as a final judgment in the Commonwealth of Massachusetts.

2. Statement of the Facts

On August 18, 1982 and on September 3, 1982 the petitioner appeared at the City of Boston's Office of the Parking Clerk ("OPC") for hearings scheduled relative to eight alleged parking violations. At both hearings, the petitioner read into the record and handed a copy of a letter from the Commonwealth of Massachusetts' ("Massachusetts") Acting Supervisor of Records, James Igoe ("Supervisor") to the hearing officers assigned to these hearings by the City of Boston's Parking Clerk ("Parking Clerk") and requested a continuance. The letter was issued by the Supervisor after the OPC denied the

petitioner's request for access to public records and stated that the petitioner's appeal had been received and was being considered by his office. Petitioner's requests were for information pertaining to the OPC's hearing procedures, including the Parking Clerk's Rules of Evidence and the Parking Clerk's Rules of Hearing Procedure.

In both instances, the request for a continuance was denied and a hearing was commenced by the assigned hearing officers. Each of the hearing officers are or were attorneys employed by the Parking Clerk's office. Also, the hearings officers are or were staff members of the Boston Law Department. At each hearing, the petitioner requested an opportunity to inspect original parking tickets or tags and the right to subpoena witnesses. At both hearings, the hearing

officers denied these requests. No witnesses appeared at the hearings to authenticate or substantiate the claimed violation with oral testimony. The Parking Clerk had established a rule that Boston can present its case against an alleged violator without the presence of the issuing officer at the hearing. The hearing officers conducted the proceedings using a computer printout or a similarly named document as the only evidence. This printout did not contain many of the elements required by statute to establish a valid ticket, including: the name and badge number of the issuing official, the division of the issuing official, a schedule of fines, instructions for the return of ticket or a notice of the violator's rights. The Parking Clerk had issued an opinion (or rule) that the aforementioned computer

printout was sufficient to make a prima facie case against the alleged violator. At both hearings, the plaintiff was found liable for the parking tickets.

At the second of these hearings, the petitioner stated for the record that the hearing was being held in violation of his due process rights. Additionally, after the second hearing's conclusion, the hearing officer changed his decision on one violation after being informed by an assistant parking clerk that this violation had been previously dismissed by the OPC.

The hearing officer's judgments are final. As final judgments, these determinations result in a liability which is due and owing to Boston and can be collected by the Collector/Treasurer in accordance with applicable law. Subsequent to the above hearings, the

petitioner contacted the Commonwealth's West Roxbury District Court for its records of the alleged violations. The West Roxbury District Court had original jurisdiction over five of the alleged violations before the jurisdiction for these tickets was transferred to the OPC, as required by the statutes in question. The court, by way of a Standard District Court File Update Form dated March 10, 1983, stated that each of the violations which were the subject matter of the August 18, 1982 hearing had been previously dismissed.

V. ARGUMENTS

1. THE APPEALS COURT'S HOLDING THAT THE ACTUAL BIAS OF ADMINISTRATIVE HEARING OFFICERS IS CONSTITUTIONALLY ACCEPTABLE IS IN DIRECT CONFLICT WITH THE COURT'S HOLDING THAT A POSSIBLE TEMPTATION TOWARD BIAS VIOLATES DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Court in Ward v. Village of Monroeville, 409 U.S. 57 (1972),

established strict prohibitions against the granting of hearing authority to an official whose judgment could be financially biased. The Court invalidated an Ohio statute that allowed a mayor of an Ohio municipality to sit as a judge for certain ordinance and traffic violations. The mayor's convictions for two parking violations were found to violate due process of law even though there was no evidence of bias at the mayor's hearings and even though the mayor's salary was not affected by these convictions. Due process was violated by the possible temptation to the mayor as an executive responsible for village finances as he was "potentially partisan" to maintain a high level of contribution to the city's finances.

G.L. c. 90s. 20A 1/2 and 1982 Mass Acts c. 190 violate the prohibition

established in Ward by creating hearing authority in an administrator, the Parking Clerk, who is financially biased by specific responsibilities to maximize the net receipts from parking violations.

G.L. c 90s 20A 1/2 specifically requires the Parking Clerk to maximize net receipts from parking violations by limiting the "amounts to be expended for administration of this section [to] eleven percent of the total amount of receipts" collected by the Parking Clerk.

1982 Mass Acts c. 190 places a limitation of personnel costs which were "not to exceed five percent of the total amount of receipts collected by the Parking Clerk in the previous fiscal year".

The Appeals Court, without commenting on the obvious invalidating bias present if the Parking Clerk held the subject

hearings, held that the hearing officers assigned to the Parking Clerk's hearings did not have a "sufficiently direct (or indirect) financial stake in the outcome of the administrative adjudication so as to constitute an invalidating interest under the due process clause".

The Appeals Courts ruling therefore inconsistently holds that the hearing officers had some (impermissible) financial interest in the outcome of the Parking Clerk's hearings and yet that this interest was insufficient to require an invalidation of the contested statutes. This ruling is a clearly in error in light of the test which the Court established in Ward. Ward prohibited the granting of hearing authority not only to an administrator who had any sort of financial interest in the outcome of his hearings, it

prohibited the granting of hearing authority to anyone who could be tempted to be biased by financial interest. The Appeal Court's ruling holds that the Parking Clerk has freed himself from the obvious invalidating bias present in these statutes by assigning to his hearings, members of his staff who systematically applied his rules and regulations regardless of their unreasonableness or their illegality. The evidence developed at the Superior Court showed that the hearing officers acted at all times within the strict parameters of the authority as delineated by the Parking Clerk's Rules of Hearing Procedure. A particularly illustrative example of the effect of the pervasive bias which resulted from these statutes and the hearing officers lack of judicial independence was the hearing officers

refusal to grant a continuance while the petitioner was appealing the Parking Clerk's denial of the petitioner's request for access to public records, including the Parking Clerk's Rules of Hearing Procedure. By denying a continuance, which would have resulted in minimal expense to the Parking Clerk, the hearing officers did not act as reasonable and independent jurists but with a fundamental unfairness which has always been an anathema to our system of law. Additionally, at both proceedings at the OPC, the only evidence entered was a computer printout ("printout"), which did not contain many elements required for a valid ticket. This evidence was insufficient for a finding of liablility under both the authorizing statutes and the longstanding, in the Commonwealth of Massachusetts, "legal residium" rule

which holds that an agency holding an administrative hearing cannot base its decision entirely on hearsay. Sinclair v. Director of Division of Employment Security, 331 Mass. 101 (1954). And yet, at both hearings, the hearing officers, who are attorneys, found liability based obviously insufficient evidence. Their decisions were made within the strict parameters of the Parking Clerk's policies, including the policy which established computer printouts as prima facie evidence. Their actions were not those of independent and unaffected jurists, but were the actions of employees to meet specific policies established by their employer to meet statutory receipt maximization demands.

The Appeals Court did not explain, and perhaps could not explain consistent with its holding, why allegedly unbiased

hearing officers uniformly applied unlawful and unresonable procedures and regulations which were established to minimize the cost of the Parking Clerk's hearings and maximize his net receipts.

The hearing officer's actions can not merely be found to be the actions of employees who were meeting their obligations to their employer. Each of the statutes in question requires that the Parking Clerk maintain his personnel expenses at a minimal amount compared to his gross receipts. Mathematically, this statutory obilgation is reflected below:

Gross Receipts	Amount Available For Expenditure
0	0
500,000.	25,000.
1,000,000.	50,000.
5,000,000.	250,000.
10,000,000.	500,000.

Undeniably, this statutory scenario provides the Parking Clerk and those who

work with him the motivation to maximize the receipts from Parking violations. Most assuredly, this scenario provides the Parking Clerk with the motivation and the impermissible temptation to bias the rules and regulations governing his hearings and to select as hearing officers those individuals who will apply his rules with a true sense of loyalty to their superior. Additionally, this statutory scheme undoubtedly places a burden on the decision making process of any hearing officer as he or she would most certainly be impermissibly tempted to consider adopting a personal policy of finding for the Parking Clerk to insure his or her continued employment. As is stated above, in Ward v, Monroeville, supra, it is the mere possible temptation, not only an actual temptation, which violates due process.

These statutes clearly violate the prohibitions of Ward in that the Parking Clerk and his delegates were not merely tempted to be biased as they in fact were biased.

The existence of this bias is further established by the fact that the petitioner was found liable for six (out of eight) violations which had been previously dismissed (five by the West Roxbury District Court and one by the Parking Clerk's Office).

Additionally, the Parking Clerk's impermissible bias is established by an analysis of the history of G.L.c. 90 s.20A 1/2 and 1982 Mass Acts c. 190.

G.L.c. 90s. 20A1/2 was enacted on July 21, 1981; this statute was revised to grant the Parking Clerk hearing authority and to give Boston an augmented financial interest in the receipts from

parking tickets. This statute was enacted approximately eight months after Boston's funds from real estate taxes were severely limited by G.L.c. 59s. 21C, which is commonly known as Proposition 2 1/2.

1982 Mass Acts c. 190 was an enactment which, among other things, granted the City of Boston additional authority to issue bonds. This funding was necessitated by judicial decisions which required the refunding of over-assessed real estate taxes.

Though the Massachusetts legislature may have had many intentions in enacting these statutes, a clear result was that of providing the City of Boston with a source of potential revenue concurrent with a requirement that the Parking Clerk maximize receipts from this source.

In summary, the Appeals Court's holding that the Parking Clerk's hearings were not biased by G.L. c. 90s. 20A 1/2 and 1982 Mass Acts c. 190 is unsupported by the facts of this matter. The facts which do establish that the bias in these statutes is pervasive at the Office of the Parking Clerk. The Parking Clerk's actions and the actions of his delegates bear witness to the wisdom of the Court in holding that even a possible temptation toward bias of an administrator who has been granted hearing authority is a violation of due process.

2. G.L.c.90s 20A 1/2 and 1982 MASS ACTS c. 190 VIOLATE DUE PROCESS OF LAW BY THEIR FAILURE TO PROVIDE FOR A METHOD OF EXAMINING THE GOVERNMENT OFFICIALS WHO HAVE ACCUSED AN INDIVIDUAL OF A VIOLATION OF LAW.

As has been discussed above, G.L. c. 90s 20A 1/2 and 1982 Mass Acts c. 190

place specific responsibilities on the Parking Clerk to maximinize his net profits from his receipts; however, these statutes place little emphasis on the rights and protections which are to be afforded an alleged violator. The statutes require that the "hearings be informal", "that the rules of evidence will not apply", and that tickets "are admissible as to the facts contained therein...". There are no provisions which provide an alleged violator the opportunity to confront an adverse witness, or issuing officials. It is apparent that by not providing the opportunity to confront witnesses, particularly the accusing official(s), that the effect of these statutes is to limit the amount of information which an alleged violator can offer in his defense. The right of confrontation has

always been considered necessary to meet the requirements of due process of law when an administrative agency is sitting in an adjudicatory function.See Doe v. U.S. Civil Service Commission, 483 F.Supp. 539 (1980) (D.C. N.Y.) and Davis, Administrative Law Treatise,s.12:9 (1979). The petitioner's research on this issue indicates that the Appeals Courts decision in this matter is the first to find that the right of confrontation is not a requirement of due process of law when the constitutionally protected rights of an emancipated citizen are at issue. The opportunity to confront adverse witnesses has always been considered a basic right, in both civil and criminal cases, Greene v. McElroy, 360 U.S. 474 (1958). The denial of the right to confront a government official whose statement is the entire basis of

the City's claim against him and which is likely to result in a deprivation of a property right of an alleged violator, is a denial of fundamental fairness and is constitutionally impermissible, Greene v. McElroy, supra, Doe v. U.S. Civil Service Commission, supra.

Significantly, the Appeals Court's ruling removes from the citizens of Massachusetts their longstanding assurance that they possessed the right to confront a government employee who has accused them of a violation of law. The court's rulings allow employees of the OPC to maximize the gross receipts from parking tickets without concern as to whether they maybe confronted with the illegality (if any) of their actions. This freedom from accountability continues even with matters that are subject to judicial review, since

judicial review here is limited to a review of the evidence presented at the administrative agency and not a trial de novo. Catrone v. State Racing Commission, 17 Mass App. Ct. 484 (1984).

If the reviewing court determines that additional information is needed, it must return the matter to the administrative agency for the information to be developed at the agency level. She Enterprises Inc. v. State Building Code Appeals Board, 20 Mass. App. Ct. 271 (1985). Since the agency here is not empowered to subpeona witnesses, the issuing officals are immune from subpeona to explain their official actions. Notably, this blanket immunity from subpeona exceeds the (previously) unique and limited immunity from subpeona which has been granted the Vice President and the President of the United States. See

United States v. Burr, 25 Fed. Cas. 187, 191 (no. 14694)(CCD Va. 1807) and United States v. Nixon 417 U.S.683 (1974)

In summary, the hearing procedures established by G.L. c. 90s 20A 1/2 and 1982 Mass. c.190 Acts violate due process of law by failure to provide an alleged violator with even minimal due process protections. Further, the Appeals Court's ruling that citizens are not entitled to confront a government employee who has accused them of a violation of law violates the principles of fundamental fairness on which our system of laws is based.

3. THE PARKING CLERK'S ACTIONS IN HOLDING BIASED ADMINISTRATIVE HEARINGS WERE VIOLATIVE OF THE PETITIONER'S CONSTITUTIONALLY PROTECTED RIGHTS.

In the present instance, the Parking Clerk, acting under the color of state law and by holding biased hearings,

violated the procedural due process rights of the plaintiff. 42 U.S.C s. 1983, Carey v. Piphus, 435 U.S. 247, (1977), Doe v. U.S.Civil Service Commision, supra.

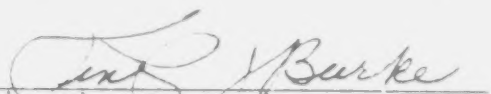
The Appeals Court's ruling is an affirmance of the Superior Court's grant of a license to the Parking Clerk to maintai.. his policies of providing insufficient evidence, at hearings biased by his rules and regulations, as a cost-effective method of meeting his statutory requirement of maximizing his net receipts from parking tickets, with the insignificant license fee being a potential reversal with a Superior Court appeal.

CONCLUSION

For all the reasons stated herein, the petitioner requests that the Court grant his petition for Certiorari.

Though he realizes that the monetary value of his claim is small, the Appeals Court's ruling that biased administrative hearings are Consitutionally acceptable and that citizens are not allowed the right of examining government witnesses who have accused them of violations of law, effect a substantial revision of the American notion of due process of law which should be considered by the Court.

Respectfully submitted,



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APPENDIX

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

No. 88-P-390

TIMOTHY J. BURKE, JR.

vs.

CITY OF BOSTON & another.[1]

SUPPLEMENTAL MEMORANDUM AND ORDER

The plaintiff has filed a petition for rehearing in this case. His petition indicates that he notified the Attorney General of the pendency of his amended complaint and that the Attorney General by letter dated August 15, 1983, indicated that he had no present intention of participating in the action.

[1]The parking clerk of the city of Boston.

The plaintiff thus had made it appear that he has complied with the requirements of G. L. c. 231A, Section 8, although, as he acknowledges, he did not indicate that fact by including in the appendix the relevant correspondence.

The general claims made by the plaintiff about the constitutionality of G. L. c. 90, Section 20A 1/2, and St. 1982, c. 190, Section 13B, are discussed in part 2 of our memorandum and order of February 3, 1989, with respect to the plaintiff's claims that he was denied due process and was entitled to damages under 42 U.S.C. Section 1983 and G. L. c. 12, Section 11I. We concluded that the hearings officers retained by the parking clerk did not have a sufficiently direct or indirect financial stake in the

outcome of these cases so as to require their removal from hearings in order to satisfy the due process clause. We also concluded that the other procedural aspects of the statute attacked by the plaintiff satisfied due process. These conclusions apply with equal force to the plaintiff's general constitutional claims. Additionally, we find no merit in the argument that the payment of parking fines to the city of Boston through the office of the parking clerk renders the administrative scheme established by the statute unconstitutional. No other argument has been raised which merits discussion.

Parts 1 and 3 of the memorandum and order entered on February 3, 1989, are vacated. That memorandum and order is

supplemented by this decision. The judgment is affirmed.

By the Court (Greaney, C.J., Dreben & Warner, JJ.)

Assistant Clerk

Entered: February 21, 1989

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

88-P-390

TIMOTHY J. BURKE, JR.

vs.

CITY OF BOSTON & another. [1]

MEMORANDUM AND ORDER UNDER RULE 1:28

The plaintiff, a lawyer, commenced an action in the Suprior Court against the city of Boston and its parking clerk. The plaintiff's amended complaint is nineteen pages long, contains fourteen overlapping and redundant counts, and could be said to border on the vexatious. The amended complaint sought a declaration under G. L. c. 231A that the

[1]The parking clerk of the city of Boston.

provisions of G. L. c. 90, Section 20A 1/2, and St. 1982, c. 190, Section 13B, relating to the processing of parking violations by the city of Boston are unconstitutional under both the United States and Massachusetts Constitutions. Additionally, the complaint sought (a) to reverse findings made by the parking clerk of the plaintiff's responsibility on several alleged parking violations, and (b) damages (including costs and attorney's fees), under 42 U.S.C. Section 1983, and G. L. c. 12, Section 11I, for certain alleged violations of the plaintiff's civil rights.

A judge of the Superior Court heard the plaintiff's claims and entered "Findings of Fact, Rulings, of Law and Decision." The judge concluded that the findings of the plaintiff's responsibility on the contested parking

tickets should be reversed and the tickets dismissed. The judge additionally declared that G. L. c. 90, Section 20A 1/2, and related statutes, were no unconstitutional, and that none of the actions taken by the defendants violated the plaintiff's rights under 42 U.S.C. Section 1983, and G. L. c. 12, Section 11I. The plaintiff has appealed from the judgment and asks us to declare G. L. c. 90, Section 20A 1/2, and St. 1982, c. 190, unconstitutional, to determine that his civil rights have been violated, and to assess the defendants at least nominal damages as well as costs and attorney's fees.

1. The plaintiff is not entitled to a declaration of rights because he has failed to seek to add the Attorney General to his action as required by G. L. c. 231A, Section 8. The consequence

of such an omission was stated in Wright v. Lawrence, 21 Mass. App. Ct. 343, 345 (1985), in these terms:

> "[W]e find a violation of Section 8 of [G. L. c. 231A] in that it does not appear of record that the Attorney General was notified and given an opportunity to be heard with respect to the constitutional phases of the suit. As recently stated in Shell Oil Co. v. Revere, 383 Mass. 682, 684 (1981), '[s]uch notice and opportunity to be heard are "conditions precedent to the entry of a declaratory decree." Court St. Parking Co. v. Boston, 336 Mass. 224, 226 (1957).' Cf. Lowell v. Boston, 332 Mass. 709, 740-741 (1984); City Manager of Medford v. Civil Serv. Commn., 329 Mass. 323, 330 (1952). Strictly, this would

eliminate from the suit the constitutional claims . . . . "

We therefore conclude that the constitutional claims should be eliminated from the appeal. We reach this conclusion notwithstanding the fact that the claims were considered in the Superior Court. The omission is a fundamental one. It should not be ignored even if the defect has gone unnoticed below because the Court is deprived of the aid of a constitutional officer whose job it is to maintain the integrity of enactments of the Legislature.

2. The issue whether the plaintiff was denied procedural due process and thereby entitled to nominal damages under 42 U.S.C. Section 1983 and G. L. c. 12, Section 11I (see Carey v. Piphus, 435 U.S. 247, 266 [1978], and Blake v. Commissioner of Correction, 403 Mass. 764, 770-771 [1989]), turns primarily on

the findings of fact made by the judge. The judge found that the plaintiff was afforded an impartial hearing and that the unavailability of cross-examination or the ability to subpoena witnesses did not violate the plaintiff's due process rights because the plaintiff had a sufficient opportunity to present his side of the case in an informal administrative hearing. We agree.

The hearing officers did not have a sufficiently direct (or indirect) financial stake in the outcome of the administrative adjudication so as to constitute an invalidating interest under the due process clause. [2]The hearing

[2]The hearing officers were attorneys and members of the Boston Law Department. They were employed by the office of the parking clerk. R.A. at 4,5.

See Tumey v. Ohio, 273 U.S. 510 (1927); Ward v. Village of Monroeville, 409 U.S. 57 (1972). The hearing officers had no personal monetary interest in the outcome of the adjudication, nor were they professional competitors of the plaintiff with any real incentive to make adjudgment inconsistent with the facts and the law. See Ward v. Village of Monroeville, supra. See and compare Wilson v. New Orleans, 479 So. 2d 891, 901 (La. 1985) (private corporation retained by city for collection of parking tickets on contingent fee basis had demonstrable financial interest in maintaining the "booting" program at a high level of collections and thus was not a neutral and detached decision maker under Ward).

Moreover, the due process clause did not require, in these circumstances, that

plaintiff be given the opportunity to confront, cross-examine, or call witnesses. See Goss v. Lopez, 419 U.S. 565, 579, 583 (1975); Mathews v. Eldridge, 424 U.S. 319, 333-335 (1976). The plaintiff was adequately provided the fundamental opportunity to address the propriety of the tickets in an informal way without adherence to strict rules of evidence. See Goss, 419 U.S. at 583 ("[t]o impose in each such case even truncated trial-type procedures might well overwhelm administrative facilities"). Additionally, the fact that the judge found that the hearing officers had erred in deciding the nature of the evidence that could be used to establish a violation of the parking laws does not make out a violation of the civil right statutes, just as an erroneous evidentiary ruling by a judge,

or other quasi-judicial hearing officer, would not form a basis for damages in a civil rights action. On the facts found, we agree with the judge's ruling "that none of the actions taken [by defendant] were violations of the plaintiff's rights under 42 U.S.C. Section 1983, or under Section 11 of Chapter 12 of the Massachusetts General Laws."

3. The judgment (R.A. 1, 54) does not contain the declaration concerning the constitutionality of the statute which the judge stated he would give in his Memorandum of Decision (R.A. 8). We have indicated that the case was not an appropriate one for a declaration. consequently, in affirming, we are affirming only the judgment dismissing the parking tickets and the plaintiff's civil rights claims.

Judgment affirmed.

By the Court (Greaney, C.J.
Dreben & Warner, JJ.),

Clerk

Entered: February 3, 1989.

Total Client-Service Library® References—

77 Am Jur 2d, United States § 43

Amendment 13

(Adopted December 18, 1865)

SECTION 1

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2

Congress shall have power to enforce this article by appropriate legislation.

Total Client-Service Library® References—

USCS Constitution, Amendment 13 (interpretative notes and decisions)

45 Am Jur 2d, Involuntary Servitude and Peonage §§ 1 et seq

L Ed Annotations—

Race discrimination. 21 L Ed 2d 915.

Amendment 14

(Adopted July 28, 1868)

SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Cross References—

Deprivation of due process by Federal government, see Fifth Amendment.

Total Client-Service Library® References—

USCS Constitution, Amendment 14 (interpretative notes and decisions)

16 Am Jur 2d, Constitutional Law §§ 465 et seq

12 Am Jur Proof of Facts 2d, p. 645 (Sex Discrimination in Employment–Promotion Practices).

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. § 1979; Pub.L. 96–170, § 1, Dec. 29, 1979, 93 Stat. 1284.

Historical Note

Codification. R.S. § 1979 is from Act Apr. 20, 1871, c. 22, § 1, 17 Stat. 13.

Section was formerly classified to section 43 of Title 8, Aliens and Nationality.

1979 Amendment. Pub.L. 96-170 added "or the District of Columbia" following "Territory," and provisions relating to Acts of Congress applicable solely to the District of Columbia.

Effective Date of 1979 Amendment. Amendment by Pub.L. 96-170 applicable with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after Dec. 29, 1979, see section 3 of Pub.L. 96-170, set out as an Effective Date of 1979 Amendment note under section 1343 of Title 28, Judiciary and Judicial Procedure.

Legislative History. For legislative history and purpose of Pub.L. 96-170, see 1979 U.S.Code Cong. and Adm.News, p. 2609.

Cross References

Citizenship clause, see U.S.C.A.Const. Amend. 14, § 1.
Conspiracy to interfere with civil rights, damages for, see section 1985 of this title.
Jurisdiction of district courts of civil rights actions, see section 1343 of Title 28, Judiciary and Judicial Procedure.
Privileges and immunities clauses, see U.S.C.A.Const. Art. 4, § 2, cl. 1 and Amend. 14, § 1.

Federal Rules of Civil Procedure

One form of action, see rule 2, Title 28, Judiciary and Judicial Procedure.
Rules as governing procedure in all suits of civil nature whether cognizable as cases at law or in equity or admiralty, see rule 1.

Library References

Civil Rights ⇐13.5(1). C.J.S. Civil Rights §§ 114, 115, 119, 124.

West's Federal Forms

Allegations of jurisdiction, see §§ 1077, 1090.
Complaint, see §§ 1849, 1850, 1850.10, 1851, 1851.5, 1852.5 to 1852.15.
Declaratory judgments, see § 4781 et seq.
Preliminary injunctions and temporary restraining orders, matters pertaining to, see § 5271 et seq.
Three-judge courts, matters pertaining to, see § 6051 et seq.

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CASE NOTES

The instant section is designed to establish a simple and convenient procedure for the disposition on essentially an administrative basis of charged violations of motor vehicle parking regulations, and it was enacted to relieve the courts and the police of the burden of disposing of minor traffic violations under the usual criminal procedure and to free violators from inconvenience disproportionate to the gravity of their offence. Commonwealth v Marder (1963) 346 Mass 408, 193 NE2d 695.

The noncriminal disposition of parking offences under § 20A as an alternative to criminal proceedings under § 20 is a simple administrative method of enforcing traffic rules without depriving one of an opportunity for a judicial determination, it is open to all citizens on the same basis and constitutes a reasonable classification of minor offences for special administrative treatment, and as applicable to minor offences: the fact that the noncriminal disposition of an offence on a potentially more favorable basis than disposition by judicial determination under § 20 may deter a defendant from insisting upon a trial under § 20, and may coerce an admission of a guilt which does not exist does not render such noncriminal disposition unconstitutional as denying due process of law, nor is such a procedure unreasonable or discriminatory. Commonwealth v Marder (1963) 346 Mass 408, 193 NE2d 695.

As applied to minor offences such as parking violations, the fact that a noncriminal disposition under the instant section may be more favorable to the defendant than a trial under § 20 in that it may lead to a lesser fine and not subject the defendant to the risk of a criminal record, thus deterring the defendant from seeking a trial under § 20 and being coerced into admitting a guilt which might not exist, does not render the instant section unconstitutional. Commonwealth v Marder (1963) 346 Mass 408, 193 NE2d 695.

No substantial federal question was presented by an appeal raising the question whether a person charged with a traffic violation may be forced by §§ 20 and 20A of the instant chapter to choose between pleading guilty and paying a small fine, or going to trial and risking the possibility of a greater punishment of found guilty. Marder v Massachusetts (1964) 377 US 407, 12 L Ed 2d 405, 84 S Ct 1626.

Phrase in GL c 90 § 20F, reading "the procedure established for criminal cases," has same meaning as identical phrase in parking violations statute (GL c 90 §§ 20A, 20C), i.e., procedure applicable to misdemeanor prosecutions generally, including right to trial by jury. Commonwealth v Germano (1979) 379 Mass 268, 397 NE2d 663.

Pursuant to ALM GL c § 20A½, underlying $15 traffic fine, which is imposed to facilitate city government's regulation of traffic and parking, and first surcharge of $5, which is to encourage efficient and expedient collection, are not dischargeable in bankruptcy; additional $15 surcharge, payable to parking clerk, is dischargeable since it is charge to recover pecuniary loss due to work and expense incurred by clerk performing additional procedures; final $5 charge payable to registry of motor vehicles is not penalty but is reimbursement for added expenses incurred by registry and is dischargeable. Re Caggiano (1983, BC DC Mass) 34 BR 449.

§ 20A½. Parking Regulations; Violations in Certain Cities and Towns; Non-criminal Disposition; Notice; Appearance; Schedule of Fines.

In the cities of Boston and Cambridge and in any city or town

which accepts the provisions of this section, each manager in a city having a Plan D or E form of charter or the mayor, with the approval of the city council or board of aldermen in any other city, or the town council or board of selectmen of a town shall designate or appoint a parking clerk. The parking clerk shall report to the council or aldermen of a city, the council or board of selectmen of a town and shall supervise and coordinate the processing of parking notices in such city or town. The parking clerk shall have the authority, after such authorization by the mayor and city council in a city or town council or selectmen in a town, to hire and designate such personnel as may be necessary or contract by competitive bid for such services, subject to appropriation, to implement the provisions of this section; provided, however, that such positions shall be filled in the city of Boston and Cambridge by granting preference to persons who had been employees of said cities in the fire, police or traffic crossing guard service, and all such positions in said city of Boston and Cambridge shall be subject to chapter thirty-one, and in no case in the city of Boston and Cambridge shall the amount expended for administration of this section exceed eleven per cent of the total amount of the annual receipts collected by the parking clerk.

It shall be the duty of every police officer who takes cognizance of a violation of any provision of any rule, regulation, order, ordinance or by-law regulating the parking of motor vehicles established for their respective city or town, forthwith to give the offender a notice, which shall be in tag form as provided in this section, to appear before the parking clerk of the city or town wherein the violation occurred at any time during regular office hours, not later than twenty-one days after the date of such violation. All tags shall be prepared in triplicate and shall be prenumbered.

Said tag shall be affixed securely to the motor vehicle and shall contain, but shall not be limited to, the following information: the make, color and registration number of the vehicle involved and the state of issuance of said registration number, the date, time and place of the violation, the specific violation charged and, if a meter violation, the number of said meter, the name and badge number of the officer and his division, a schedule of established fines, instructions for the return of the tag and a notice which reads: This notice may be returned by mail, personally or by an authorized person. A hearing may be obtained upon the written request of the registered owner. Failure to obey this notice within twenty-one days after the date of violation may result in the non-renewal of the license to drive and the registration of the registered owner.

At or before the completion of each tour of duty, the officer shall

give to his commanding officer those copies of each notice of such violation taken cognizance of during such tour. Said commanding officer shall retain and safely preserve one of such copies and shall at a time no later than the beginning of the next business day of the city or town after receipt of such notice deliver another of such copies to the parking clerk before whom the offender has been notified to appear. The parking clerk shall maintain a docket of all such notices to appear.

Any person notified to appear before the parking clerk, as provided herein, may appear before such parking clerk, or his designee, and confess the offense charged, either personally or through an agent duly authorized in writing or by mailing to such parking clerk the notice accompanied by the fine provided therein, such payment to be made only by postal note, money order or check made out to the parking clerk. Payment of the fine established shall operate as a final disposition of the case. Notice affixed to a motor vehicle as provided in this section, shall be deemed a sufficient notice, and a certificate of the officer affixing such notice that it has been affixed thereto, in accordance with this section, shall be deemed prima facie evidence thereof and shall be admissible in any judicial or administrative proceeding as to the facts contained therein.

The traffic and parking commission of the city of Boston, the traffic commission or traffic director of any other city or town having such a commission or director with authority to promulgate traffic rules, the city council of any other city, and the board of selectmen of any other town, shall, from time to time, establish by rule or regulation a schedule of fines for violations subject to this section committed within such city or town; provided, however, that all such fines shall be uniform for the same offense committed in the same zone or district, if any; and provided, further, that any fine established under the provisions of this section shall not exceed fifteen dollars, if paid within twenty-one days, twenty dollars if paid thereafter but before the parking clerk reports to the registrar as provided below, and thirty-five dollars if paid thereafter.

Should any person notified to appear hereunder fail to appear and, if a fine is provided hereunder, to pay the same, or having appeared desire not to avail himself of the benefits of the procedure established by this section, the parking clerk shall forthwith schedule the matter before a person hereafter referred to as a hearing officer, said hearing officer to be the parking clerk of the city or town wherein the violation occurred or such other person or persons as the parking clerk may designate. Written notice of the date, time and place of said hearing shall be sent by first-class mail to the registered owner.

Said hearing shall be informal, the rules of evidence shall not apply and the decision of the hearing officer shall be final subject to judicial review as provided by section fourteen of chapter thirty A.

If any person fails to appear in accordance with said notice, the parking clerk shall notify the registrar of motor vehicles who shall place the matter on record and, upon receipt of two or more such notices, shall not renew the license to operate a motor vehicle of the registered owner of the vehicle or the registration of said vehicle until after notice from the parking clerk that all such matters have been disposed of in accordance with law. Upon such notification to the registrar, an additional ten dollar charge, payable to the registrar of motor vehicles, shall be assessed against the registered owner of said vehicle. It shall be the duty of the parking clerk to notify the registrar forthwith that such case has been so disposed of in accordance with law, provided however, that a certified receipt of full and final payment from the parking clerk of the city or town in which the violation occurred shall also serve as legal notice to the registrar that said violation has been disposed of. The notice to appear provided herein shall be printed in such form as the registrar of motor vehicles may approve. The parking clerk shall distribute such notices to the commanding officer of the police department of the city or town upon request, and shall take a receipt therefor. The registrar shall approve such other forms as he deems appropriate to implement this section, and said forms shall be printed and used by the cities and towns.

If any person shall have failed to appear in accordance with five or more said notices, notwithstanding any notification to the registrar, the parking clerk may notify the chief of police or director of traffic and parking of said city or town that the vehicle involved in said multiple violations shall be removed and stored, or otherwise immobilized by a mechanical device, at the expense of the registered owner of said vehicle until such time as the matter has been disposed of in accordance with law.

As used in this section, the words "motor vehicle" shall, so far as apt, include trailer, semi-trailer and semi-trailer unit.

The provisions of this section shall apply to violations of rules and regulations relative to the use of parking areas subject to the control of the county commissioners adjacent to or abutting county buildings, and county commissioners are hereby authorized to make such rules and regulations. Said provisions shall also apply to violations of rules and regulations relative to the parking of motor vehicles established by any commission or body empowered to make such rules and regulations. (1981, 351, § 115; 1981, 746, §§ 6–8; 1983, 233,

ized by section two of chapter ninety of the General Laws, or upon any handicapped person whose vehicle displays the distinctive number plate authorized by said section two, for parking such vehicle on any way for a longer period of time than permitted by a rule or regulation adopted under this section or promulgated under section two B. A penalty imposed under this section may, if so provided in the regulation imposing the penalty, be increased by up to thirty-three and one-third per cent if it remains unpaid for at lease twenty-one days after issuance of a notice of a violation of a parking regulation as provided under section four A.

SECTION 13B. Said chapter 263 is hereby further amended by striking out section 4, as most recently amended by chapter 754 of the acts of 1977, and inserting in place thereof the following eight sections:-

Section 4. In the city of Boston, the mayor, with the approval of the city council, shall designate or appoint a parking clerk. The parking clerk shall supervise and coordinate the processing of parking notices in the city of Boston. The parking clerk shall have the authority, subject to appropriation, to hire or designate such personnel as may be necessary, or contract for such services as may be necessary, to implement the provisions of this section; provided, however, that such positions shall be filled in the city of Boston by granting preferences to persons who had been employees of the city of Boston in the fire, police or traffic and crossing guard service, and all such positions in said city of Boston shall be subject to chapter thirty-one, and in no case in the city of Boston shall the amount appropriated for personnel costs exceed five per cent of the total amount of receipts collected by the parking clerk in the previous fiscal year.

Section 4A. It shall be the duty of every police officer, and every person or persons assigned such responsibility, who takes cognizance of a violation of any provision of any rule, regulation, order, ordinance or by-law regulating the parking of motor vehicles established for the city of Boston, forthwith, to give the offender a notice, which shall be in tag form as provided in this section, to appear before the parking clerk at any time during regular office hours, not later than twenty-one days after the date of such violation. All tags shall be prepared in triplicate and shall be prenumbered.

Said tag shall be affixed to the motor vehicle and shall contain, but shall not be limited to, the following information: The registration number of the motor vehicle involved, the date, time

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Said tag shall be affixed to the motor vehicle and shall contain, but shall not be limited to, the following information: The registration number of the motor vehicle involved, the date, time

and place and specific offense charged and, if a meter violation, the number of said meter, the name and badge number of the officer or employee issuing the ticket and his division, a schedule of established fines, instructions for the return of the tag, and a notice which reads as follows: This notice may be returned by mail, personally or by an authorized person. A hearing may be obtained upon the written request of the registered owner. Failure to obey this notice within twenty-one days after the date of violation may result in the non-renewal of the license to drive and the registration of the registered owner.

At or before the completion of each tour of duty, the officer or employee shall give to his commanding officer those copies of each notice of such violation taken cognizance of during such tour. Said commanding officer shall retain and safely preserve one of such copies and shall at a time no later than the beginning of the next business day of the city of Boston after receipt of such notice, deliver another of such copies to the parking clerk before whom the offender has been notified to appear. The parking clerk shall maintain a docket of all such notices to appear.

Any person notified to appear before the parking clerk, as provided herein, may appear before such parking clerk, or his designee, and confess the offense charged, either personally or through an agent duly authorized in writing or by mailing to such parking clerk the notice accompanied by the fine provided therein such payment to be made only by postal note, money order or check made out to the parking clerk. Payment of the fine established shall operate as a final disposition of the case. Notice affixed to a motor vehicle as provided in this section, shall be deemed a sufficient notice, and a certificate of the officer affixing such notice that it has been affixed thereto in accordance with this section, shall be deemed prima facie evidence thereof and shall be admissible in any judicial or administrative proceeding as to the facts contained therein.

Section 4B. Parking violations which remain unpaid after the exhaustion of the administrative procedures available to the violator, shall constitute accounts owed to the city and shall be collected by the collector-treasurer as such in accordance with applicable laws.

If a person charged with a violation of a parking regulation appears and requests a hearing before the expiration of the twenty-first day from the date of issuance of said parking violation notice, the parking clerk shall forthwith schedule the matter before a person referred to as a hearing officer, said hearing

officer to be the parking clerk or such other person or persons as the parking clerk may designate. Written notice of the date, time and place of said hearing shall be sent by first class mail to the registered owner. Said hearing shall be informal, and the rules of evidence shall not apply. The hearing officer shall keep a record of the hearing and the decision of the hearing officer, which shall be in writing, shall be final subject to judicial review as provided by section fourteen of chapter thirty A of the General Laws.

Section 4C. Proceedings under sections four B, four C and four D of this act, shall not be deemed criminal. If any person fails to pay any parking violation notice within twenty-one days or fails to appear in accordance with said hearing notice the parking clerk shall notify the registrar of motor vehicles who shall place the matter on record and not renew the license to operate motor vehicle of the registered owner of the vehicle or the registration of said vehicle until after notice from the parking clerk that the matter has been disposed of in accordance with law. Upon such notification to the registrar, an additional five dollar charge, payable to the registrar of motor vehicles, shall be assessed against the registered owner of said vehicle. It shall be the duty of the parking clerk to notify the registrar forthwith that such case has been so disposed of in accordance with law; provided, however, that a certified receipt of full and final payment from the parking clerk shall also serve as legal notice to the registrar that said violation has been disposed of.

The parking violation notice provided herein shall be printed in such form as the registrar of motor vehicles may approve. The parking clerk shall distribute such notices to the commissioner of the police department or his designee, or the commissioner of traffic and parking or his designee, upon request, and shall take a receipt therefor. The registrar shall approve such other forms as he deems appropriate to implement this section, and said forms shall be printed and used by the city of Boston.

Section 4D. If any person shall have failed to appear in accordance with five or more parking violation notices, notwithstanding any notification to the registrar, the parking clerk shall notify the registered owner of said motor vehicle and the commissioner of police or his designee or commissioner of traffic and parking or his designee that the vehicle involved in said multiple violations should be removed and stored, or otherwise immobilized by a mechanical device, at the expense of the registered owner of said vehicle until such time as the matter has been disposed of in accordance with law. No vehicle shall be

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